TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [redacted] 1927

No. [redacted] 106

UNITED STATES STEEL PRODUCTS COMPANY, CLAIMANT AND OWNER OF S. S. "STEEL TRADER," ET AL., PETITIONERS,

vs.

DONALD J. ADAMS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

PETITION FOR CERTIORARI FILED AUGUST 24, [redacted]

CERTIORARI GRANTED SEPTEMBER 5, 1928

(28,178)

(32,135)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 568

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vs.

DONALD J. ADAMS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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[fol. 2]

IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA

DONALD J. ADAMS

vs.

S. S. "STEEL TRADER"

No. 16970

LIBEL—Filed May 24, 1922

To the Honorable Rufus E. Foster, Judge of the United States District Court, Eastern District of Louisiana, New Orleans Division, in Admiralty:

The libel of Donald J. Adams, late seaman against the Steamship "Steel Trader" her owners, Master and Agent, her engines, boilers, tackle, boats, furniture and apparel in a cause of wages, civil and maritime, alleges as follows:

I

That your libelant Donald J. Adams was employed on or about the 26th day of November in the year 1921 as an oiler on board the Steamship Steel Trader, having signed articles on or about the same date at the rate of wages of Eighty Dollars ($80.00) per month for a round trip from New Orleans to Port Arthur, Texas, thence to Greece and East Indian Ports and return to New Orleans.

[fol. 3] II

That the Steamship Steel Trader, was then and now is owned by the United States Steel Product Co. a New Jersey corporation, doing business and having its head office in the City of New York from which port said "Steel Trader" hailed.

III

That your libelant sailed from the port of New Orleans on board the said vessel on or about the 10th day of December, 1921, arriving at Port Arthur on or about the 12th day of December, 1921, where libelant was discharged without just cause or right by the Master of said Steel Trader and paid off up to the 12th day of December, 1921, your libelant refusing to sign the usual and customary mutual release, said discharging of libelant was in violation of the articles of said vessel and as result of said dismissal and paying off your libelant has been deprived of his just wages at the rate of Eighty Dollars ($80.00) per month from the 12th day of December up to and including the 19 day of May, 1922, the arrival date of said vessel at the Port of New Orleans, said wages amounting to four hundred and fourteen dollars 50 xx and subsistence from Dec. 12, 1921, at $2.50 per day to May 19th, 1922.

IV

That the Steamship Steel Trader which your libelant is informed and believes is also the property of the said United States Steel Product Company, whereof Capt. Wilson whose first name is unknown to your libelant is, or lately was Master, her engines, boilers, tackel, boats, furni-
[fol. 4] ture and apparel is now lying in the Mississippi River at the dock of United States Army Base at New Orleans and within the jurisdiction of this Honorable Court.

V

That during the whole time your libelant was in the service of the Steamship "Steel Trader," he faithfully performed his duties on board the said vessel and was dismissed against his will and without just cause and is entitled to receive his wages up to and including the day of signing off at the Port of New Orleans having signed ship articles for a round trip from New Orleans to Greece and East Indian Ports and return to New Orleans.

VI

That libelant has demanded his said wages of said owner and agent and said demands have been refused.

VII

That all and singular the premises are true and within the admiralty and martime jurisdiction of the United States and this Honorable Court.

Wherefore the libelant prays that process in due form of law according to the course of this Honorable Court in a cause of admiralty and martime jurisdiction issued against the Steamship "Steel Trader" her engines, boilers, tackle, boats, furniture and apparel and that all persons having or pretending to have any right title or interest therein may be cited to appear and answer all and singular the matters aforesaid and that this Honorable Court will be [fol. 5] pleased to decree to the libelant the judgment of the said amount due to libelant on his contract as appears by said articles signed at the City of New Orleans on or about the 26th day of November, 1921, with costs and that the said Steamship "Steel Trader" may be condemned and sold to pay the same and that the libelant may have such other and further relief as in law and justice may be entitled to receive.

(Signed) Donald J. Adams, Libelant. Eugene S. Hayford, Proctor for Libelant.

Duly sworn to by Donald J. Adams. Jurat omitted in printing.

[fol. 6] In United States District Court

Order to Issue Admiralty Process

Let admiralty process issue as prayed for.

New Orleans, La., May 24, 1922.

(Signed) H. J. Carter, Clerk.

IN UNITED STATES DISTRICT COURT

ADMIRALTY WARRANT AND MARSHAL'S RETURN—Filed May 25, 1922

Seaman's Wages

Eugene S. Hayford, Proctor

The President of the United States of America to the Marshal of the Eastern District of Louisiana or to his lawful deputy, Greeting:

You are hereby commanded to seize, and into your possession take, the Steamship "Steel Trader," her engines, boilers, tackle, boats, furniture and apparel, now libeled by Donald J. Adams, for the cause set forth in the Libel now pending in the District Court of the United States for the Eastern District of Louisiana (New Orleans Division), that you do cite and admonish the owner, or owners, and all and every other person, or persons, having, or pretending to have, any right, title, or interest in or to the same, to be and appear before a District Court of the United States for the District aforesaid, to be holden at the City of New Orleans, on the 19th day of June, A. D. 1922, to show cause, if any they have or can, why the said Steamship "Steel Trader," her engines, boilers, tackle, boats, furniture and apparel, should not be condemned and sold agreeably to the prayer [fol. 7] of Libelant; and how you have executed this warrant that you make return according to law.

Witness the Honorable Rufus E. Foster, Judge of said Court, at New Orleans, this 24th day of May, 1922, and the 146th year of the Independence of the United States.

(Signed) H. J. Carter, Clerk, by E. Wendling, Deputy Clerk. (Seal.)

Clerk's Office. A true copy. New Orleans, La., May 24, 1922. (Signed) E. Wendling, Deputy Clerk. (Seal.)

Received by U. S. Marshal, New Orleans, La., 5 24 22, and on the same day, month and year I seized and took into my custody the Steamship "Steel Trader," her tackle, machinery, engines, boilers, furniture and apparel, as she

lay in the Mississippi River, Port of N. O. and served the original of which this is a certified copy on 2nd Mate Nils Roestad whom I found in charge by handing same to him in person on board said S. S. Steel Trader at the time I seized her.

(Signed) Victor Loisel, U. S. Marshal, by H. C. Mosely, Deputy.

[fol. 8] IN UNITED STATES DISTRICT COURT

CLAIM—Filed May 26, 1922

And now J. A. Rylander, intervening for the interest of United States Steel Products Company, domiciled and doing business at New York, N. Y., appears before the Court and makes claim to the Steamship "Steel Trader" her boats, machinery, tackle, apparel, and furniture, as the same are attached by the Marshal under process of this Court at the instance of Donald J. Adams, and the said J. A. Rylander avers that he was in possession for said U. S. Steel Products Co. of said Steamship "Steel Trader" her boats, machinery, tackle, apparel, and furniture at the time of the attachment hereof, and said U. S. Steel Products Co., is the true and bona fide owner of said Steamship "Steel Trader," her boats, machinery, tackle, apparel, and furniture, and that no other person is the owner thereof, and that the said J. A. Rylander is the master of said Steamship, and the true and lawful bailee thereof for the said owner.

Wherefore he prays to be admitted to defend accordingly, and that the Honorable Court will be pleased to decree a restitution of said property to him and otherwise right and justice to administer in the premises.

(Signed) J. A. Rylander, Master S. S. "Steel Trader." Denegre, Leovy & Chaffe, Jas. Hy. Bruns, Proctors for Claimant.

[fols. 9 & 10] J. A. Rylander, being duly sworn, deposes and says that all the allegations of the foregoing claim are true and correct.

(Signed) J. A. Rylander.

Sworn to and subscribed before me at New Orleans, Louisiana, on this, the 26th day of May, A. D. 1922. (Signed) Thos. E. Furlow, Notary Public. (Seal.)

Release bond for $1,000, filed May 26th, 1922, omitted in printing.

[fol. 11] In United States District Court

Exceptions to Libel—Filed August 2, 1922

Now into Court comes the United States Steel Products Company, owner and claimant of the Steamship "Steel Trader," her engines, boilers, tackle, apparel and furniture, and for exception to the libel herein filed, alleges and shows as follows:

That the said libel and the allegations thereof are too vague, indefinite and uncertain to allow exceptor properly and accurately to answer thereto, and more particularly in specification of said exception exceptor shows:

That libelant does not allege in his libel the particulars of his discharge, and does not allege whether or not he was paid any sums or any of his wages when discharged, and if so, what sums or how much wages he was paid.

Wherefore exceptor prays that after due proceedings had, these exceptions may be maintained and libelant's libel may be dismissed hence at his cost, and exceptor further prays for such further orders and relief in the premises as the justice of the cause may require.

(Signed) Denegre, Leovy & Chaffe, Jas. Hy. Brunn, Proctors for Exceptor.

Aug. 1, 1922.

[fol. 12] *Duly sworn to by Jas. Hy. Brunn. Jurat omitted in printing.*

In United States District Court

Answer—Filed November 30, 1925

Now into Court comes the United States Steel Products Company, claimant and respondent, and for answer to the libel and complaint of Donald J. Adams herein, articulately alleges and denies as follows:

[fol. 13] I

For answer to Article No. II, respondent admits the allegations of fact therein contained except that libelant was employed on November 27th, 1921, and signed the Shipping Articles on November 29th, 1921.

II

For answer to Article No. II, respondent admits the allegations of fact therein contained.

III

For answer to Article No. III, respondent admits that libelant sailed from the Port of New Orleans on the Steamship "Steel Trader" on December 8th, 1921, arriving at Port Arthur, Texas, on or about December 12th, 1921, where libelant was discharged and paid off up to and including the 12th day of December, 1921, but respondent denies all of the other allegations of fact contained in said Article.

IV

For answer to Article No. IV, respondent admits the allegations of fact therein contained except that John A. Rylander was the Master of the Steamship "Steel Trader."

V

For answer to Article No. V, respondent denies all of the allegations of fact therein contained.

[fol. 14] VI

For answer to Article No. VI, respondent admits the allegations of fact therein contained.

VII

For answer to Article No. VII, respondent denies that all and singular or all or singular the premises are true but admits that they are within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

VIII

And now for further answer to the libel herein, respondent shows the truth to be and so alleges:

That on December 5th, 1925, there was inserted a certain wage provision as one of the voyage clauses in the Shipping Articles of the Steamship "Steel Trader" which had been drafted by and inserted in the Articles with the consent of the United States Shipping Commissioner and when it was read to the crew by the Shipping Commissioner, libelant herein, Donald J. Adams, refused to consent thereto and a note to that effect was made upon the Articles, the original Shipping Articles being referred to as part hereof the same as if incorporated herein.

IX

That as libelant, Donald J. Adams, continued to refuse his consent and adherence to said clause which became a part of the Shipping Articles, when the vessel arrived at Port Arthur, Texas, on December 12th, 1921, he [fol. 15] was discharged and paid off by the Master of the Steamship "Steel Trader" under and in accordance with the laws of the United States so made and provided and, more particularly, United States Revised Statute 4527 which provides:

"Any seaman who has signed an agreement and is afterward discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge, and without his consent, shall be entitled to receive from the Master or owner, in addition to any wages he may have earned, a sum equal in amount to one month's wages as compensation, and may, on adducing evidence satisfactory to the Court hearing the case, of having been improperly discharge, recover such compensation as if it were wages duly earned."

X

That when libelant was discharged and paid off at Port Arthur, Texas, on December 12th, 1921, he was paid an extra month's wages of $80.00 in addition to the wages earned by him, making in all $120.87, for which libelant gave the Master of the Steamship "Steel Trader" a receipt, which receipt is marked "Steel Trader No. 1" and is annexed hereto as part hereof the same as if incorporated herein in full.

XI

That libelant was properly discharged from said Steamship "Steel Trader" for refusing and continuing to refuse to agree to the Shipping Articles and clauses therein inserted by and with the consent of the United States Ship-
[fol. 16] ping Commissioner at New Orleans, but respondent shows that even if said discharge was not justified and was without fault on libelant's part, respondent has complied with all the laws of the United States for such cases, and more particularly United States Revised Statute 4527, in paying to libelant at time of discharge one extra month's wages in the sum of $80.00 as provided by said statute and has discharged all of its duties and liabilities to libelant by such payments and is not responsible to libelant in any other and further sum.

XII

That respondent, as the owner and claimant of the Steamship "Steel Trader" has complied with all of the conditions and agreements by it made in the Shipping Articles and under the laws of the United States.

Wherefore respondent prays that after due proceedings had there may be judgment herein dismissing hence libelant's libel at its costs and respondent further prays for such other and further relief as may be justified in the premises.

(Signed) Denegre, Leovy & Chaffe, Proctors for Respondent.

Nov. 30, 1925.

Duly sworn to by Jas. Hy. Braus. Jurat omitted in printing.

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[fol. 17] Minute entry of argument and submission November 30, 1925, omitted in printing.

[fol. 18] In United States District Court

Statement of Evidence Filed November 20, 1925

Note of Evidence

Be it remembered that when on the 30th day of November, 1925, the above numbered and entitled cause was called for trial before this Honorable Court, the Proctors for the United States Steel Products Company, respondent and claimant, produced, offered and filed in open Court the following documents in evidence on behalf of respondent and claimant:

1. The original answer of the United States Steel Products Company, claimant and respondent, to the libel and complainant of Donald J. Adams; together with all exhibits annexed thereto.

2. The deposition of John A. Rylander, a witness on behalf of the claimant and respondent, said testimony being taken by consent before E. B. Glenny, Notary Public, at the office of Denegre, Leovy & Chaffe, 724 Whitney Central Building, New Orleans, Louisiana, on Thursday, June 15th, 1922, together with all the exhibits mentioned therein and filed therewith and annexed thereto and more [fol. 19] particularly the original Shipping Articles identified by the witness, which Articles are on file in this Honorable Court in the suit of Charles Nott et als. vs. the Steamship "Steel Trader," No. 16,989 of the docket of this Court, and for the purposes of their introduction claimant and respondent includes the record in that suit in its offer in this note of evidence, and the original log of the Steamship "Steel Trader," and the original receipt identified by the witness and marked "Steel Trader" No. 1.

TESTIMONY ON BEHALF OF CLAIMANT, TAKEN OUT OF COURT—Filed November 30th, 1925

Maritime Division

Testimony taken in the above numbered and entitled case by consent before E. B. Glenny, notary public, at the office of Messrs. Denegre, Leovy & Chaffe, 724 Whitney-Central Building, New Orleans, La., on Thursday, June 15th, 1922, on behalf of claimant and respondent

APPEARANCES OF COUNSEL

Messrs. Denegre, Leovy & Chaffe (Mr. Bruns) for claimant & respondent.

Mr. E. S. Hayford for libelant.

STIPULATION RE TESTIMONY

It is hereby stipulated by the Proctors for the respective parties that signing, sealing and certification are waived, [fol. 20] the opposing side to be furnished with a copy of the testimony, stenographer's fees to be taxed as costs.

JOHN A. RYLANDER, being duly sworn by E. B. Glenny, notary public, testified as follows:

Direct examination.

By Mr. Bruns:

Q. Will you give your name and occupation?

A. John A. Rylander, Master Mariner, Steamship Steel Trader.

Q. What is your home address,—where do you get your mail?

A. Norton, Lilly & Company, New Orleans, Louisiana.

Q. How long have you been Master of the S. S. Steel Trader?

A. Since November 7th, 1921.

Q. Were you the Master of the Steel Trader on the voyage out of New Orleans in November, 1921?

A. Yes, sir.

Q. When did you leave New Orleans on that trip?
A. I have to refer to the log book,—December 8th, 1921.
Q. You left New Orleans, December 8th, 1921?
A. Yes, sir.
Q. When did you sign on the crew?
A. We signed on the crew on November 29th.
Q. Have you the original shipping article with you?
A. Yes, sir.
Q. These are the original articles I have here?
A. Yes, sir.
[fol. 21] Q. And they are kept by the United States Shipping Commissioner at the Customs House in New Orleans, La.?
A. Yes, sir.

Mr. Bruns: In connection with the testimony of the witness Proctors for the Claimant offer, produce and file in evidence the original Shipping Articles of the S. S. Steel Trader.

Q. Have you the original log left with the United States Shipping Commissioner?
A. Yes, sir.
Q. Let's see that?
A. Yes, sir.
Q. That also stays with the United States Shipping Commissioner.
A. Yes, sir.

Mr. Bruns: Proctors for the Claimant offer, produce and file in evidence in connection with the testimony of the witness the original log which speaks for itself.

Mr. Hayford:

Q. That is a copy of the original log?
A. That is the official log.
Q. This is not the log filed with the Shipping Commissioner, this is a copy?
A. No, sir.
Q. This is the original log filed with the Shipping Commissioner?
A. Yes, sir.

Q. How did you get it in your possession now?
A. I receipted for them.

[fol. 22] Mr. Bruns:

Q. Was Adams on that voyage?
A. Yes, sir.
Q. And he signed on in these articles that you are speaking of?
A. Yes, sir.
Q. When did he leave your ship, and under what circumstances?
A. He left the ship at Port Arthur, Texas, on December 12, 1921.
Q. Did you pay him any money at that time?
A. Yes, sir.
Q. What did you pay him, and have you a receipt for it?
A. Yes, sir, I paid him his wages from November 27th to December 12th, sixteen days, and also paid him an extra month's wages $80.00, a total of $122.67.
Q. Have you a receipt for that amount?
A. Yes, sir.
Q. That was signed by Adams in your presence?
A. Yes, sir.

Mr. Bruns: Proctors for the Claimant offer, file and produce in evidence the receipt, marking same Steel Trader No. 1.

Q. What wages per month did Adams receive, this $80.00 I see here?
A. Yes, sir.
Q. That is shown by the Shipping Articles?
A. Yes, sir.
Q. Before whom was Adams paid off?
A. I paid him before the United States Shipping Commissioner at Port Arthur.
Q. Texas?
[fol. 23] A. Yes, sir.
Q. On the day that you speak of?
A. Yes, sir.

Cross-examination.

By Mr. Hayford:

Q. Why was Adams paid off?
A. Because he would not agree to the wage scale.

Mr. Bruns:

Q. Adams did not wish to be paid off did he?
A. No, sir.

JOHN A. RYLANDER, being recalled by Mr. Hayford, testified:

Q. When did you clear at New Orleans, what date, I do not mean the date you sailed, I mean the date you cleared, —can you not associate that with the signing on the crew?
A. I can associate it with my sailing, I think it was the 7th of December.
Q. Are you quite positive about that?
A. Not absolutely.
Q. You have no way of fixing it by the log entry?
A. I have the log book here but I did not have any entry in it about clearing or sailing.
Q. But your recollection is that it was the 7th?
A. Yes, sir.

By Mr. Bruns:

Q. What is your recollection of the date that stipulation was put in the shipping articles?
[fol. 24] A. December 5th, I have it here, I have an entry of it here.
Q. You have an entry in the log on that?
A. Yes, sir.
Q. What date does the log show?
A. December 5th.

EXHIBIT—"STEEL TRADER No. 1"—Filed November 30, 1925

Form No. A-81

Isthmian Steamship Lines, 39 Cortlandt St., New York, U. S. A.

Discharge Pay Receipt

Steel Trader No. 1

No. 2

Paid off at Port Arthur, Texas (Port); date: Dec. 12, 1921.

Services Rendered S. S. Steel Trader

Name: D. J. Adams; rating, Oiler; is entitled to wages from Nov. 27 to Dec. 12, 1921, — Mos. 16 days at $80 per mo	$42 67
Overtime from Extra months wages (must be Supported by Daily Record)	80 00
Total earnings	$122 67

[fol. 25] Deductions

Allotments: — months at $— per month	
Advances	
Slop account as per log book	1 80
Total Deductions	$1 80
Balance Due	$120 87
Fines	

Officer in charge: (Signed) Wm. A. Bruesand.

Attest: (Signed) John A. Rylander, Master.

Certified: (Signed) A. A. Ginter, Act. U. S. Shipping Commissioner, U. S. Consul. (Seal.)

Received above amount. (Signed) D. J. Adams.

This voucher is not transferable. No alterations allowed.

[fol. 26] IN UNITED STATES DISTRICT COURT

STIPULATION RE PRAECIPE AND TRANSCRIPT—Filed January 18, 1925

No. 16970

It is agreed by and between undersigned proctors for all parties herein, that in making up the transcript of record herein there shall be omitted from the praecipe and the printed record the following original exhibits annexed to the answer filed herein and the deposition taken and filed herein on behalf of claimant and respondent:

2. The original Shipping Articles of the Steamship "Steel Trader."

1. The original log book of the Steamship "Steel Trader."

it being stipulated and agreed that the only material parts of said exhibits are as follows:

First exhibit: Entry in Log Book reading as follows:

"December 12, 1921, Port Arthur.

I have this day paid off before the United States Shipping Commissioner, Donald J. Adams, oiler, paying 16 days at $80.00 and one month's wages as per law, amounting to $120.87.

John A. Rylander, Master. Donald J. Adams, Oiler."

[fol. 27] Second exhibit: Original shipping articles, the words and figures on page 1 thereof reading as follows:

"Office of U. S. Shipping Commissioner of the Port of New Orleans

November 29, 1921.

It is agreed between the Master and seamen or mariners of the S. S. "Steel Trader" of New York of which J. Rylander is at present Master, or whoever shall go for Master, now bound from the Port of New Orleans, to Pireaus, Greece, and East Indian Ports, and such other ports and places in any part of the world as the Master may direct and back to a final port of discharge and or loading ports

on the Atlantic or Gulf Coast in the United States, for a term not exceeding 12 calendar months;"

and the following clause in the following words and figures on page 1 of said Articles reading as follows:

"Should any changes in the scale of wages of crews employed on vessels whose owners are members of the American Steamship Owners Association, be made after the departure of this vessel, such scale of wages shall prevail on this vessel from date new scale is put into effect by the American Steamship Owners Association."

this clause being typewritten on a slip of paper and pasted on the foot of page 1 of the Articles and on said slip there appears written in ink the following words and figures:

"Members of Lines 7 and 24 do not agree to above wage adjustment.

J. D. P. D. S. C."

[fol. 28] and it is stipulated and agreed that Donald J. Adams, libelant and appellee herein, appears as a member of either Line 7 or 24.

New Orleans, January 16th, 1926.

(Signed) Denegre, Leovy & Chaffe, Proctors for United States Steel Products Company and Globe Indemnity Company, Appellants. Eugene S. Hayford, Proctor for Donald J. Adams, Appellee.

In United States District Court

Opinion—Dated December 4/25; Filed December 5/25

Libelant shipped as oiler on the American Steamship "Steel Trader," having signed articles November 29th, 1921, though employed on November 27th, 1921, at the rate of $80.00 per month for a round trip from New Orleans, via. Port Arthur, Texas, to Piraeus, Greece, and East Indian ports, and return to an Atlantic or Gulf port, sailing December 8, 1921, arriving at Port Arthur, the first call port, December 12, 1921, where he was discharged and paid off up to and including that date.

[fol. 29] He alleges he refused to sign the customary mutual release because he was discharged without just cause and in violation of the shipping articles; that he is due wages up to May 19, 1922, the arrival date of the vessel's return to New Orleans, amounting to $414.50 and subsistence at $2.50 per day for the same period, according to contract.

Claimant's answer is in effect a general denial, with special allegations that on December 5, 1921, there was inserted in a certain wage provision as one of the voyage clauses in the shipping articles, drafted and inserted as a rider thereon with the consent of the Shipping Commissioner; that when it was read to the crew by the Shipping Commissioner, libelant Adams refused to consent thereto, and a note to that effect was made upon the voyage clause rider; that as libelant continued to refuse consent when the vessel arrived at Port Arthur, he was discharged and paid off by the master according to R. S. 4527 Vol. 7 U. S. Comp. Stat. 8813. Barnes Fed. Code 11807.

"Any seaman who has signed an agreement and is afterward discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge, and without his consent, shall be entitled to receive from the master or owner, in addition to any wages he may have earned, a sum equal in amount to one month's wages as compensation, and may, on adducing evidence satisfactory to the Court hearing the case, of having been improperly discharged, recover such compensation as if it were wages duly earned."

that he was paid an extra month's wages of $80.00 in addition to the earned wages, making a total of $120.87, for [fol. 30] which he gave a receipt before the United States Shipping Commissioner.

The wage provision inserted as a voyage clause, in the articles, after he was signed, to which libelant refused to consent, reads:

"Should any changes in the scale of wages of the crew employed on vessel whose owners are members of the American Steamship Owners Association, be made after the departure of this vessel, such scale of wages shall pre-

vail on this vessel from date new scale is put into effect by the American Steamship Owners Association."

Considering that libelant had signed the articles on November 29, 1921, and expressly refused to consent to the voyage clause, which was inserted on December 5, while the vessel was still in port, and before the voyage was commenced on December 8, 1921, he should have been then discharged and not thereafter, when he was discharged for the sole reason that he persisted in refusing to consent while at sea between New Orleans and Port Arthur, Texas, where the ship arrived December 12, 1925.

Unquestionably the seaman had a right to stand upon the terms of his contract as originally signed, and that he was within his right in refusing to consent to the objectionable clause.

Libelant contends that the action of the master in commencing the voyage and awaiting arrival at a port of call, there to discharge him, was a breach of his contract for which damages will lie, which should be measured by the wages he would have earned at the completion of the voyage, up to and including May 22, 1922, and subsistence; that the decision in the "Howick Hall" case, No. 16989 of the docket, [fol. 31] is decisive of this controversy; that seamen are the wards of the Court, whose wage contracts will be jealously protected, in keeping with the general policy of Maritime Law; that the penalty of one month's wages prescribed by R. S. 4527 is not the sole remedy afforded him, as the claimant insists; that R. S. 4529 more properly applies; that the cases cited by claimant in support of its contention that the penalty of one month's wages discharges the vessel and owner of further liability are not in point; that the decisions in the "Inland," 271 Fed. 1008; Brown v. U. S. 283 Fed. 425; the "Menton," 287 Fed. 583; the "George B. Ferguson," 140 Fed. 955; the "Staghound" and the "Gamecock," 97 Fed. 973; do not support claimant's contention.

Clearly the libelant was entitled to the protection of his rights of contract in the shipping articles as he signed them, by which his employment was assured him for a period of some four months at a fixed wage and subsistence.

The cases cited on both sides, including the Wilson case, 210 Fed. 898, in which there was no discharge of the seamen, are not sufficiently in point to sustain the application of the penalties of either R. S. 4527 or 4529 to the circumstances here presented, whether the penalties prescribed may be intended in the nature of statutory damages for breach of contract or not.

Congress could not have intended to deny seamen equal protection of the law as applied to contracts generally, by the enactment of these statutes intended to aid and give special protection to seamen.

The decision of late Circuit Judge Pardee, in the "City of New Orleans," (33 Fed. 683), is more nearly applicable to the situation here presented. In that case where some roustabouts shipped on a river packet from Cairo, Illinois, to New Orleans, and return to Cairo, were discharged on [fol. 32] arrival at New Orleans, and paid their wages up to time of arrival by direction of the owner, because the voyage was broken up on account of ice in the river at Cairo, held that they were entitled to wages for the round trip. Although section 4527 had then been subsisting law, since 1877, the case was decided in 1888 without any reference to it whatever.

Likewise in the T. P. Leathers case (C. C. A. 5th Circuit), 74 Fed. 845, where a roustabout shipped for a voyage from New Orleans to Waterloo and return, was discharged because incapacitated by a freezing of his hands by ice on the return trip to Vicksburg, the wages and damages allowed him by the District Court were denied on appeal only because on his own testimony the libelant had volutarily left the boat and was not discharged against his consent.

Likewise in the "White Seal" (C. C. A. 9th C.) 194 Fed. 402, where the evidence was held to sustain a finding of the District Court that libelant was discharged without cause from his position as Chief Engineer of a steamer before the end of his contract term and entitled him to recover wages to the end of the term.

Considering that it does not appear in the evidence of record that libelant was a party constructively, as a member of a union or otherwise, to any general seamen's strike, or in any wise bound by any wage agreement that might have been reached between a union and the ship owners, or by

any arbitrary decision of the steamship owners, so that his status was measurable only by his individual contract, appearing on the face of shipping articles at the time of signing; that on his direct examination the master testified that Adams was paid off at Port Arthur, Texas, on December 12, 1921, simply because: "he would not agree to the wage scale," which means nothing except that he stood upon his [fol. 33] contract as he made it, it is concluded that the libelant is entitled to the relief prayed for up to the amount of his wages from December 13, 1921, to May 19, 1922, inclusive. The amount claimed for subsistence is not sustained by evidence.

Accordingly there will be a decree for libelant in the sum of $414.50, less a credit of the $80.00 already paid him as a penalty, with 6% interest from May 19, 1922. Costs to follow decree.

(Signed) Louis H. Burns, Judge.

New Orleans, Louisiana, December 4, 1925.

In United States District Court

Order to Show Cause.—Filed December 7, 1925

On motion of the United States Steel Products Company, Claimant and Respondent, through its proctors, Denegre, Leovy & Chaffe, and on showing to the Court that mover is aggrieved by the judgment and opinion rendered herein in favor of libelant on December 5th, 1925, that the said judgment is contrary to the law and the evidence and mover desires a rehearing herein;

It is ordered that Donald J. Adams, Libelant herein be and he is hereby notified to show cause on Saturday, December 12th, why a rehearing should not be granted to the United States Steel Products Company, Claimant and Respondent herein.

[fol. 34] December 7th, 1925.

(Signed) Louis H. Burns, Judge.

Service accepted.

(Sgd.) Eugene D. Hayford, Atty. for Libelant, Donald J. Adams.

Minute entry of agreement and submission of motion for rehearing December 12, 1925, omitted in printing.

[fol. 35] IN UNITED STATES DISTRICT COURT

OPINION ON MOTION FOR REHEARING—Dated December 31, 1925; Filed December 31, 1925

This cause was heard upon a motion for rehearing filed by claimant, in support of which its proctor contends that since the seamen was admittedly one who had signed an agreement and was afterwards discharged before one month's wages were earned, without fault on his part justifying such discharge, and paid all the wages he had earned, together with a sum in addition equal to one month's wages as compensation, the case falls within the very words of R. S. 4527. He insists that the statute must be applied in this case as providing the sole remedy available to the libelant; or it must be read out of existence or declared unconstitutional. In his view the very words of the statute might be used to describe Adams, as follows: "A seaman who has signed an agreement and is afterward discharged * * * before one month's wages are earned, without fault on his part justifying such discharge, and without his consent." He thus seeks to ignore or read out of existence the first of the two specific conditions upon which the application of the statute depends.

In my view the first condition contemplates a voyage before the commencement of which the seaman is wrongfully discharged. The second does not contemplate an immediate voyage, as where the vessel is in dock or otherwise delayed, and the seaman is wrongfully discharged before the month's wages are earned.

If Congress had intended the application of the statute after as well as before a voyage is commenced" it would, [fol. 36] no doubt, have either omitted the first condition, thus merely prescribing that the extra compensation should be paid as damages for the breach upon a wrongful discharge "before one month's wages are earned"; or, in the alternative, have qualified the second condition by specifically prescribing for the extra compensation upon a wrong-

ful discharge "before one month's wages are earned" after a voyage has commenced.

As the statute stands I am persuaded that the second condition is controlled or at least qualified by the first. Certainly the Courts have no authority either to read a specific condition out of a statute, or a supposedly implied one into it, and therefore when a case such as this is presented where the wrongful discharge occurred after the commencement of the voyage contemplated by the contract the statute can not be applied.

I find support in this view in the fact that Section 21 of the original statute (Act of June 7, 1872, 17 Stat. 266) was designed to clear up confusion in the law regulating the discharge of seamen before a voyage is commenced, as it subsisted prior to 1872 as one of a series in that comprehensive act containing sixty-eight sections, variously regulating the method of employment, discipline and discharge of seamen. The Supreme Court in the Inter-Island Steam Navigation Company vs. Byrne, 239 U. S. 459, referred to its purpose as being fundamentally to afford protection to seamen in respect to their treament and wages.

That the purpose of Congress, with respect to the wrongful discharge of seamen before the voyage commenced, was to make a definite rule of compensation for breach of contract, seems manifest from the pre-existing confusion upon this point reflected in the jurisprudence and text books of that time. Whereas there was no doubt [fol. 37] with respect to a discharge after the commencement of a voyage that damages would be recoverable in an action either at common law *of* by a libel in admiralty for a breach of contract to be regulated by the circumstances of the case. This seems certain from the significant omission by Congress of any statutory provision with respect to wrongful discharges occurring after the commencement of voyages or after one month's pay has been earned.

Claimant's proctor gives a fair summary of this pre-existing condition of the law in his brief to show that this law is not peculiar to the United States, but is based upon similar European maritime laws and rules which were the forerunners of the Act of Congress and from these it ap-

pears that all doubt, uncertainty and indefiniteness was in respect to the measure of damages for a wrongful discharge before the voyage commenced, and not thereafter. These show that a clear distinction was always recognized. I quote from his brief the following excerpts:

"In the Marine Ordinances of France, Book III, Tit. IV, Article X, p. XXXII, Vol. 2 of Peter's Admiralty Decisions, it was provided:

"If a Master dismiss a mariner without a sufficient cause before the voyage is begun, he must pay him one third of his wages; and if after the voyage is begun, he shall pay his whole wages, together with his charges for returning to the place of his departure."

Article III of the same Book and Title the Ordinances provided:

"If by the fault of the owners, masters or merchants, a voyage be broke before departure of the ship, the seamen [fol. 38] hired for the voyage shall be paid for the time taken up in rigging and equipping the ship, and have one-fourth of their wages."

Article XLI of the Laws of the Hanse Towns, Vol. I, Peter's Admiralty Decisions, p. CV, provided:

"If a mariner behaves ill the master may turn him off; but if he discharges him for no reason before the voyage begins, he shall pay him a third part of his wages, but shall not charge it to the ship's account."

In the "Rights and Duties of Merchant Seamen" by Curtis, Boston 1841, that then leading authority at p. 299 said:

"In regard to the measure of damages, when a seaman is wrongfully discharged, the maritime law of continental Europe makes a distinction between such discharge abroad, and when made before the vessel sails. If discharged in a foreign country, the entire wages, with the expenses of return are given if discharged before the vessel sails, only a third of the wages that might have been earned are awarded,

for the reason that the mariner can readily find other employment."

At page- 299-301 he says in part:

"It does not appear that this proportion of one-third has been adopted in our law in cases of wrongful discharge before the vessel sails. Damages would undoubtedly be recoverable, in an action on the case at common law, or by a libel in the Admiralty, for the breach of the contract, to be regulated by the circumstances of the case."

[fol. 39] Parsons in 1869 in Vol. II, p. 50 of his Law of Shipping stated the rule:

"For the settled rule appears to be, that if the voyage is broken up, or the seamen are dismissed without cause before the voyage begins, they have their wages for the time they serve, and a reasonable compensation for special damages."

A reading of the Laws of Shipping of the time before 1872, Parsons, Flanders, Dixon, Abbott, will show into what confusion this question had come. It is safe to say, therefore, that Congress enacted R. S. 4527 to clear up that confusion and to provide an exact measure of damages for such cases."

The briefs filed here purport to exhaust our Federal jurisprudence since 1872, and yet in no case cited does the precise question as to whether or not R. S. 4527 provides the exclusive and sole remedy afforded seamen wrongfully discharged, and particularly those discharged after the voyage is commenced. In some cases the parties so assumed and apparently confined their claims to an extra month's compensation, and the Courts made awards accordingly. In others it appeared that the seamen had not been discharged at all and therefore the statute did not apply. In others the compensation was assessed by analogy to the statute, though it did not directly apply. See The "Donna Lane," 299 F. 977; The "Great Canton," 299 F. 953; The "Quaker City," 290 F. 409; The "Men-

ton," 287 F. 531; Brown vs. United States, 283 F. 425; Hughes vs. Southern Pacific Co., 274 F. 876; The "Inland," 271 F. 1008, affirmed without opinion, 279 F. 1018; Manhattan Canning Co. v. Wilson, 205 F. 996; 210 F. 898, affirmed 217 F. 41; The "August Belmont," 153 F. 639; [fol. 40] Caffyn v. Peabody, 149 F. 294; The "George B. Ferguson," 140 F. 955; The "Joseph B. Thomas," 136 F. 693; The "John R. Bergen," 122 F. 98; The "Charles D. Lane," 106 F. 746; The "Villa v. Herman," 101 F. 132; The "Staghound" and the "Gamecock," 97 F. 973; The "Glenesslin," 96 F. 768; The "Alice Blanchard," 92 F. 519; The "St. Paul," 77 F. 998; The "Caroline Miller," 36 F. 507; The Schooner "Jefferson Borden," 6 F. 301.

This list includes all cases shown in the digest and in Shepard's Citations, where Section R. S. 4527 has been cited, mentioned or construed, and in none of them has the precise question been squarely presented and considered by the Courts.

Claimant also cites as decisive of this case a decision in Calvin vs. Huntley, 178 Mass. 29, 59, N. E. 435, where the State Court considered R. S. 4527 in determining its jurisdiction of seamen's claims for wages. What that Court actually decided was that the statute did not contemplate imposing a penalty or forfeiture, but was designed to protect the seamen, and furnish a clear, well-defined rule of damages for a breach of contract as between him and the Master or owner, by having a general law with reference to which the parties may be conclusively presumed to have contracted. This much is undoubtedly true, but it does not necessarily follow that the rule so adopted is to be stretched beyond its manifest purpose.

The necessary conclusion is that Section 4527 does not apply to claims of seamen for compensation for damages for breach of their contracts by wrongful discharge without fault on their part justifying such discharge, and without their consent, after the commencement of the voyage.

Accordingly the motion for rehearing will be denied and a decree entered.

[fol. 41] The inadvertent use of the words "as a penalty" in the concluding paragraph of the original memorandum

opinion filed December 4th, 1925, is to be taken as amended so as to read "erroneously paid as extra compensation."

(Signed) Louis H. Burns, Judge.

New Orleans, Louisiana, December 31, 1925.

IN UNITED STATES DISTRICT COURT

DECREE—December 31, 1925

This cause came on at a former day to be heard upon the pleadings and proofs as specified in the notes of evidence offered on behalf of the respective parties, and was argued by the proctors for the parties in interest and submitted when the Court took time to consider;

Whereupon, and on due consideration thereof and for the written reasons of the Court on file herein;

It is ordered, adjudged and decreed by the Court that the libelant herein, Donald J. Adams, do have and recover of and from the respondent, Steamship "Steel Trader," the full sum of Three Hundred and thirty-four and 50/100 [fol. 42] ($334.50) Dollars, with 6% interest from May 19, 1922, until paid, and all costs of Court, and

Whereas, the said Steamship "Steel Trader" has been released from seizure herein upon a bond conditioned as required by law, with the United States Steel Products Company as claimant and owner of said Steamship "Steel Trader," as principal, and Globe Indemnity Company, as surety;

It is further ordered, adjudged and decreed that the said principal and said surety on the said release bond be condemned in solido, to pay this decree and all costs.

Decree rendered December 31st, 1925.

Decree signed, January 31st, 1926.

(Signed) Louis H. Burns, Judge.

IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL AND ORDER ALLOWING SAME—Filed January 18, 1926

To the Honorable Louis H. Burns, Judge of the United States District Court for the Eastern District of Louisiana, New Orleans Division:

The petition of the United States Steel Products Company, Claimant and Owner of the Steamship "Steel Trader," and respondent herein, and of the Globe Indemnity Company, surety on the release bond given and filed herein, with respect represents.

[fol. 43]

I

That there are errors in the final decree rendered herein in favor of libelant on the 31st day of December, 1925, and signed on the 13th day of January, 1926, said errors being to the manifest prejudice and injury of petitioners and from which they desire to appeal for the purpose of having such errors corrected as hereinafter set forth in the enclosed assignment of errors hereto attached and hereby made a part hereof as fully to all intents and purposes as if at large written herein.

II

That the above named petitioners desire that an appeal of the cause and from the whole of said decree be granted to them to the United States Circuit Court of Appeals for the 5th Circuit, returnable according to law, and that the same operate as a supersedeas on said petitioners giving bond as security according to the law, and on said appeal petitioners intend to seek a new decision on the law and on the facts upon the pleadings and proofs introduced in the District Court and to be introduced in the Appellate Court with the object of obtaining a reversal of the same and a final decree in their favor.

Wherefore petitioners pray that an appeal be granted to them in the above numbered and entitled cause from the whole of said decree to the United States Circuit Court of

Appeals for the 5th Circuit, returnable according to law upon filing a bond as security according to law, the same to operate as a supersedeas, and that libelant, Donald J. Adams, appellee herein, may be duly cited to answer this [fol. 44] appeal, and petitioners further pray for all general and equitable relief.

(Signed) Denegre, Leovy & Chaffe, Proctors for Petitioners and Appellants.

January 16, 1926.

Order

Let an appeal be granted to the above named petitioners, the United States Steel Products Company and the Globe Indemnity Company, as prayed for, upon their giving bond in the sum of Two hundred and fifty dollars ($250.00), with good and solvent surety, conditioned as the law provides, the same to operate as a supersedeas, and let libelant, Donald J. Adams, appellee herein, be duly cited to answer this appeal, the said appeal to be returnable to the United States Circuit Court of Appeals for the 5th Circuit within thirty days of the date of this order.

(Signed) Louis H. Burns, Judge.

New Orleans, Louisiana, January 18th, 1926.

Service accepted.

(Signed) Eugene S. Hayford.

[fol. 45] In United States District Court

Assignments of Error—Filed January 18, 1926

Now comes the United States Steel Products Company, Claimant and Owner of the Steamship "Steel Trader," respondent herein, and the Globe Indemnity Company, surety on the release bond given and filed herein, praying an appeal of this cause and assigning the following errors in the final decree rendered herein:

I

That the judgment is contrary to the law and the evidence.

II

That the Court erred in finding and holding that United States Revised Statute 4527 was not applicable to this case and the amount of compensation provided for therein did not constitute the sole remedy to which libelant, appellee herein, was entitled.

III

That the Court erred in finding and holding that libelant, appellee herein, was entitled to a decree for $414.50, less a credit of $80.00 already erroneously paid as extra compensation, with 6% interest from May 19th, 1922, and costs, or for any other sum whatever.

IV

That the Court erred in not finding and holding that the United States Revised Statute 4527 was applicable and [fols. 46 & 47] specially made and provided to cover the class of cases and circumstances involved in this suit and the claims herein presented and that the one month's extra wages made and provided in said Act as compensation constituted the sole remedy of libelant, appellee herein, and as the claimant and respondent, appellant herein, had paid said libelant said amount and all amounts due under said United States Revised Statutes 4527, and had complied in every respect with the said statute, no further or other amounts were due libelant and his suit and libel should have been dismissed and a final decree rendered in favor of claimant and respondent, appellant herein. And for these reasons and other errors, appearing on the face of the record, appellants pray that the decree appealed from be reversed and that said appellants being respondents herein, and claimant and owner of the Steamship "Steel Trader" and principal and surety on the release bond, may have a decree against the libelant, appellee herein, dismissing his libel with costs.

New Orleans, Louisiana, January 16, 1926.

(Signed) Denegre, Leovy & Chaffe, Proctors for United States Steel Products Company and Globe Indemnity Company, said Appellants.

Bond on appeal for $250.00, filed January 18th, 1926, omitted in printing.

[fol. 48] In United States District Court

Praecipe for Transcript of Record—Filed January 18 26

Mr. Henry J. Carter, Clerk United States District Court, Eastern District of Louisiana, New Orleans Division:

In making up the transcript of record for appeal in the above numbered and entitled cause, please include therein [fol. 49] only the following documents, exhibits, pleadings, evidence and minutes, to wit:

1. Libel.
2. Admiralty Warranty and Marshal's return thereon.
3. Claim.
4. Release bond.
5. Exceptions filed by claimant and respondent.
6. Answer.
7. Hearing and submission of cause.
8. Note of evidence for claimant & respondent.
9. Deposition for claimant & respondent.
10. Exhibit "Steel Trader 1" discharge certificate before United States shipping commissioner, Port Arthur, Texas, December 12th, 1921.
11. Written stipulation of proctors of this date annexed hereto as part hereof agreeing to omission of certain exhibits and containing agreement of essential facts therein contained to be filed and certified up with this record.
12. Opinion of the Court dated December 4th, 1925.
13. Application for rehearing and order thereon.

[fol. 50] 14. Hearing and submission of cause upon application for rehearing.

15. Opinion of Court upon application for rehearing, dated December 31st, 1925.
16. Final decree signed January 13th, 1926.
17. Petition for an appeal and order allowing same.
18. Assignment of errors.

19. Bond of appeal.
20. This praecipe.

New Orleans, January 18th, 1926.

Respectfully, (Signed) Denegre, Leovy & Chaffe, Proctors for United States Steel Products Company and Globe Indemnity Company, Appellants Herein.

Praecipe approved.

(Signed) Eugene S. Hayford, Proctor for Donald J. Adams, Appellee.

[fol. 51] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 52] Minute entry of argument and submission April 7, 1926, omitted in printing.

[fol. 53] In United States Circuit Court of Appeals,
Fifth Circuit

No. 4759

United States Steel Products Company, Claimant and Owner of S. S. "Steel Trader," et al., Appellants,

versus

Donald J. Adams, Appellee

Appeal from the District Court of the United States for the Eastern District of Louisiana

Jas. Hy. Bruns (Geo. Denegre, Victor Leovy, Henry H. Chaffe, Harry McCall, and Jas. Hy. Bruns on the brief) for Appellants.

Eugene S. Hayford for appellee.

Before Walker, Bryan, and Foster, Circuit Judges

Opinion—Filed May 13th, 1926

Walker, Circuit Judge:

By duly signed shipping articles, dated New Orleans, La., November 29, 1921, the appellee was employed as an oiler on board the steamship Steel Trader "from the Port of New Orleans to Pireaus, Greece, and East Indian Ports, and such other ports and places in any part of the world as the Master may direct and back to a final port of discharge and or loading ports on the Atlantic or Gulf Coast in the United States, for a term not exceeding twelve calendar months;"—his wages being at the rate of $80.00 [fol. 54] per month. After the articles were signed the following provision, typewritten on a sheet of paper, was pasted on the foot of page 1 of the articles, a notation written in ink on that slip showing that appellee did not consent to that provision:

"Should any changes in the scale of wages of crews employed on vessels whose owners are members of the American Steamship Owners Association, be made after the departure of this vessel, such scale of wages shall prevail on this vessel from date new scale is put into effect by the American Steamship Owners Association."

On December 12, 1921, at Port Arthur, Texas, to which place the vessel went on leaving New Orleans, the appellee was discharged without his consent because he would not agree to the last above quoted provision. He was then paid wages at the contract rate for the time he had served and an extra month's wages of $80.00, and for the amount so paid he gave a receipt before a United States Shipping Commissioner, but did not sign any release of demands for wages. After the return of the vessel to the port of New Orleans on May 19, 1922, the appellee filed his libel alleging that he was discharged in violation of said articles, against his will and without just cause, and claiming that he was entitled to his wages up to and including the day of signing off after the vessel's return to New Orleans. The claim asserted was resisted on the ground that the appellee was discharged and paid off in accordance with

the provision of Section 4527 of United States Revised Statutes, which reads as follows:

"Any seaman who has signed an agreement and is afterward discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge, and without his consent, shall be entitled to receive from the Master or owner, in addition to any wages he may have earned, a sum equal in amount to one month's wages as compensation, and may, on adducing evidence satisfactory to the Court hearing the case, of having been improperly discharged, re- [fol. 55] cover such compensation as if it were wages duly earned."

By the decree appealed from the appellee was awarded the amount of his wages for the voyage, less a credit of $80.00 paid as above stated, with 6% interest from May 19, 1922.

The only ground on which the decree is complained of is that under 4527 R. S. the payment made satisfied all liability incurred by the wrongful discharge of the appellee. The appellee's rights under the contract evidenced by the shipping articles are governed by ordinary rules of contract except as modified by statute. Unless a statute otherwise provides, on the wrongful discharge of an employee before the expiration of the time for which he was employed he is entitled to compensation for the services already rendered and also to such damages as he may sustain as a result of the wrongful discharge or breach of the contract. To say the least, the language of the provision in question does not clearly manifest a purpose to give to the payment to a seaman wrongfully discharged within the time mentioned of the amount of any wages he may have earned and in addition a sum equal to one month's wages the effect of satisfying all liability incurred by wrongfully discharging him. That provision was originally enacted as section 4 of the Seaman's Act of June 7, 1872, the fundamental purpose of which was to afford protection to seamen in respect to their treatment and wages. Inter-Island Steam Navigation Co. v. Byrne, 239 U. S. 459. The immediately preceding section of that act, before it was amended by the Act of December 21, 1898, (U. S. Comp. Stat. 8317), read as follows: "In cases where the service of any seaman

terminates before the period contemplated in the agreement, by reason of the loss or wreck of the vessel, such seaman shall be entitled to wages for the time of service prior to such termination, but not for any further period." This [fol. 56] provision is explicit in limiting the time for which the seaman shall be entitled to wages, while R. S. 4527 makes the amount therein prescribed payable to a seaman, on his discharge under the circumstances therein dealt with, "as if it were wages duly earned," without indicating that such payment has the effect of satisfying all liability to the seaman resulting from his wrongful discharge. The last mentioned provision determines the amount to be paid, "as if it were wages duly earned," to the wrongfully discharged seaman in the presence of a duly authorized shipping commissioner. R. S. 4549. R. S. 4552 determines the legal effects of a discharge before a shipping commissioner. The second paragraph of that section declares that it "shall operate as a mutual discharge and settlement of the demands for wages between the parties thereto, on account of wages in respect of the part voyage or engagement." That language does not disclose a purpose to give to the payment of the prescribed amount in the presence of a shipping commissioner the effect of satisfying or extinguishing whatever right of action the seaman then may have against the ship or its owner. The case of the W. L. White, 25 Fed. 503, involved the question of the effect, on the right of a seaman hurt in the service of the ship to recover from the ship the expenses of his cure, of his discharge pursuant to the provision of the Dingley Act of June 26, 1884, that "whenever a seaman is discharged by a consular officer in consequence of any injury received in the service of the vessel, such consular officer shall require the payment by the master of one month's extra wages over and above the wages due at the time of the discharge." It was held that such discharge did not absolve the vessel from liability for the expenses of the seaman's medical treatment and cure for a hurt received prior to the dis- [fol. 57] charge. The following was included in the opinion of Judge Addison Brown in that case:

"If a cause of action in favor of the seaman had already accrued for injuries received by violence, or cruel usage, or insufficient food, a discharge at the end of the voyage, or

by a consul in a foreign port, would not affect his right of action. Several of the cases above cited are of that kind. It is the same with his claim for the payment of the expenses of care for a hurt received in the service of the ship prior to his discharge. The inchoate right of action has already accrued to the seaman, which is not affected by a discharge from further claim to wages. * * * There is nothing in the act of June 26, 1884, intimating any intent to absolve the ship from her legal obligations to an injured or sick seaman, beyond, possibly, the wages to the end of the voyage that might otherwise have been recovered, instead of one month's extra pay after discharge. Section 4600, as amended by the same act, provides that the consular officer, in case of apprehension of a seaman deserting on account of 'unusual or cruel treatment, shall discharge him,' requiring payment of one month's extra wages. It is impossible to suppose that congress intended that one month's wages should be taken as satisfaction of whatever claim to damages might exist for any actual injuries inflicted by such cruelty, or as a bar to such a claim. The 'discharge' must be deemed to leave such claims unaffected. * * * If vessels could in this way relieve themselves from all charges for treatment of sick or wounded seaman, it would be an extreme hardship upon seaman, and would be liable to lead to abuses. The effect in this instance has been to deprive the seaman of the entire fruits of the voyage. An act like that of June 26, 1884, amending the prior law, and designed in part for the benefit of seamen, ought not to be construed to their prejudice any further than its language requires. As it does not expressly absolve the vessel from her liability previously incurred for the medical treatment and cure of the discharged seaman, it should not be construed as doing so any more than an ordinary discharge at the close of the voyage would do so, nor any more than it would bar a vested right of action for a tort."

The language of R. S. §4527 is consistent with an intention to treat the amount required to be paid to the wrongfully discharged seaman as compensation for the service already rendered by him. Certainly that language falls far short of expressly absolving the vessel, on the payment of such amount, from her liability for damages for [fol. 58] breaching the contract evidenced by the shipping

articles. That provision determines what is payable to the wrongfully discharged seaman at the time of his discharge. Other provisions determine what is payable at the time of the discharge of a seaman on account of the unseaworthiness of the vessel, or when the vessel is sold in a foreign country, or on the complaint of a seaman in a foreign country based on alleged violations of his rights. U. S. Comp. Stat. §§8350, 8373, 8374. Shipping commissioners and consular officers are vested with authority to exact compliance with those provisions. U. S. Comp. Stat. §§8297, 8338, et seq. In the absence of a seaman's consent, those officials are not vested with authority or jurisdiction to determine what is recoverable on accrued or inchoate causes of action in favor of the seaman against the ship or its owner, based on alleged torts or breaches of contract obligations. In the absence of a statute requiring a different result, after the entering upon the voyage provided for in the shipping articles the ship is pledged to the complete execution of the contract, and may be proceeded against for non-performance, and if a seaman is discharged without justifiable cause before the termination of the voyage he is entitled to full indemnity, which may be measured by the stipulated wages for the entire voyage and the amount of expenses in returning to the port of discharge, deducting what he earned, or reasonably could have earned, in other employment during the period of his engagement. The Topgallant, 84 Fed. 356; Waitshoair v. The Grargend, 42 Fed. 175; The City of New Orleans, 33 Fed. 683; The White Seal, 194 Fed. 402. While in the [fol. 59] cases of many discharges covered by R. S. §4527 the amount thereby required to be paid to the seaman on his discharge would be sufficient to afford him full indemnity, it is apparent that in many other cases covered by that provision that amount would be greatly less than enough to indemnify the seaman for the loss resulting from the violation of his contract rights. The discharge which was in question in the last above cited case was not covered by R. S. §4527, and no question as to the meaning or effect of that statute was considered in that case. The facts of that case, as disclosed by the report of it, show that if that statute had been applicable and the libellant therein

had been an oiler engaged at wages of $80.00 a month for a voyage from Seattle to Fairbanks, Alaska, and return, and had been wrongfully discharged at Fairbanks thirteen days after the date of the shipping articles, (as happened to the appellee in the instant case), the wages then accrued and $80.00 in addition would have been substantially less than enough to cover the cost of the seaman's transportation from Fairbanks to Seattle. If the statutes in question has the meaning attributed to it by counsel for the appellant it has the effect of making it possible to discharge a seaman engaged for a long voyage, without his consent and without fault on his part, at whatever place, other than a foreign port, where the ship may be before one month's wages are earned, without incurring any liability except to pay any wages he may have earned and in addition a sum equal in amount to one month's wages, though what is so paid is greatly less than enough to indemnify the seaman for the loss resulting from the violation of his contract rights. During the early part of a long [fol. 60] voyage a new crew might be obtained at such wages as to make it profitable, by paying one month's extra wages, to get rid of the entire crew previously engaged for the voyage. Plain language would be required to justify the imputation to Congress of an intention to permit seamen to be subjected to such treatment and to be deprived of adequate redress therefor. Frequently it is impossible at or about the time of the wrongful discharge of a seaman to ascertain what financial loss will result to him therefrom. In great measure the result depends on what, if any, opportunities he has of getting other employment. It is reasonably to be expected that the seaman will suffer loss in consequence of such a discharge. The language of the provision in question, considered with reference to the situation dealt with, shows that the lawmakers intended thereby to require the payment, when the described wrongful discharge of a seaman is effected in the circumstances stated, of an amount ordinarily sufficient for his immediate needs; but an inference that such payment was intended to have the effect of satisfying all claims, accrued or inchoate, of the seaman against the ship or its owner is one not required by that language and is not in harmony with the funda-

mental purpose of the Act of which that provision was a part to protect seamen and to safeguard rights they had prior to the enactment of that statute.

We conclude that the provision in question did not give to the payment made to the appellee the effect of destroying his right to full redress for the alleged wrong to him, and that the only ground on which the decree was complained of is not a tenable one.

That decree is affirmed.

[fol. 61] In United States Circuit Court of Appeals

[Title omitted]

Judgment—May 13, 1926

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Louisiana, and was argued by counsel:

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby, affirmed;

It is further ordered, adjudged and decreed that the plaintiffs in error, United States Steel Products Company, Claimant and Owner of the S. S. "Steel Trader," and another, and the surety on the appeal bond herein, United States Fidelity & Guaranty Co., be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

[fol. 62] In United States Circuit Court of Appeals, Fifth Circuit

[Title omitted]

Motion for Stay of Mandate and Order Allowing Same—Filed May 28, 1926

Comes now the appellants in the above styled cause, and moves the Court for a stay of the mandate of this Court for a time sufficient to enable the appellants to present to the

Supreme Court of the United States an application for a writ of certiorari.

(Signed) Jas. Hy. Bruns, Attorney for Appellants.

May 28, 1926.

Upon presentation of the foregoing motion, it is ordered that the mandate in said cause be stayed until the first Monday in October, 1926; and if by that time appellants [fol. 63] have submitted to the Supreme Court of the United States an application for certiorari, issuance of said mandate be stayed pending the disposition of said application for certiorari.

Done and Ordered at New Orleans, Louisiana, this 28th day of May, A. D. 1926.

(Signed) Rufus E. Foster, U. S. Circuit Judge.

[fol. 64] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 65] In Supreme Court of the United States

Order Allowing Certiorari—Filed November 1, 1926

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.